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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,511	07/11/2003	Per Bjoerkman	4441-A-31	6599

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EXAMINER

KIM, PAUL D

ART UNIT	PAPER NUMBER
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3729

DATE MAILED: 05/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary****Application No.**

10/618,511

**Applicant(s)**

BJOERKMAN ET AL.

**Examiner**

Paul D Kim

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 April 2005.  
 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 19-23,25,26 and 31-38 is/are pending in the application.  
 4a) Of the above claim(s) 19-23,25 and 31 is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 26 and 32-36 is/are rejected.  
 7) ☒ Claim(s) 37 and 38 is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☒ The drawing(s) filed on 11 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☒ All b) ☐ Some \* c) ☐ None of:  
 1. ☐ Certified copies of the priority documents have been received.  
 2. ☒ Certified copies of the priority documents have been received in Application No. 09/219,090.  
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
 \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 7/11/03.  
 4) ☐ Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_  
 5) ☐ Notice of Informal Patent Application (PTO-152)  
 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This office action is a response to the restriction requirement filed on 4/1/2005.

#### ***Response to the Restriction Requirement***

1. Applicant's election without traverse of Group II, claims 26 and 32-38, in the reply filed on 4/1/2005 is acknowledged.
2. Claims 19-23, 25 and 31 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 4/1/2005.

#### ***Drawings***

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: The item "6" in Fig. 3 does not describe in the specification. Also, there is no description for Fig. 4 in the specification. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement

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Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

4. Claims 26 and 32-38 are objected to because of the following informalities:

It appears to be that the phrase --and-- is needed at the end of the limitation "therebetween;" recited in line 23 of claim 32. Appropriate correction is required.

### ***Double Patenting***

5. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

6. Claim 33, 34 and 36 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1 of prior U.S. Patent No. 6,528,008.

The recitation of claim 33 is drawn to the identical subject matter. This is a double patenting rejection.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 26 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Applicant Admitted Prior Art (APA).

Fig. 1 of APA teaches a process of making a vacuum measuring cell comprising steps of: a. manufacturing a first  $\text{Al}_2\text{O}_3$  housing plate (20) with outer and inner opposing surfaces and an outer periphery; forming an electrically conductive surface on the inner surface of the first  $\text{Al}_2\text{O}_3$  housing plate to provide a first electrode of capacitive vacuum measuring cell (lines 7-10 of page 2); manufacturing a second  $\text{Al}_2\text{O}_3$  housing plate (23) with an outer periphery; forming an opening (opening of item 24) in the second  $\text{Al}_2\text{O}_3$  housing plate extending therethrough; sealing a connecting port (24) about the opening formed in the second  $\text{Al}_2\text{O}_3$  housing plate (lines 14-15 of page 2); manufacturing of an  $\text{Al}_2\text{O}_3$  membrane (22) having first and second opening surfaces and an outer periphery; forming an electrically conductive surface on the surface of the  $\text{Al}_2\text{O}_3$  membrane to provide a second electrode of the capacitive vacuum measuring cell (lines 7-10 of page 2); disposing the  $\text{Al}_2\text{O}_3$  membrane between the inner surface of the first  $\text{Al}_2\text{O}_3$  housing plate and the second  $\text{Al}_2\text{O}_3$  housing plate with the first surface of the  $\text{Al}_2\text{O}_3$  membrane facing the inner surface of the first  $\text{Al}_2\text{O}_3$  housing plate and spacing the first surface of the  $\text{Al}_2\text{O}_3$  membrane at a predetermined distance from the inner surface of the first

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Al<sub>2</sub>O<sub>3</sub> housing plate to define reference vacuum chamber (25) therebetween, and spacing the second Al<sub>2</sub>O<sub>3</sub> housing plate at a predetermined distance from the second surface of the Al<sub>2</sub>O<sub>3</sub> membrane to define measurement vacuum chamber (26) therebetween; and sealing the outer periphery of the Al<sub>2</sub>O<sub>3</sub> membrane to the outer peripheries of first Al<sub>2</sub>O<sub>3</sub> housing plate and the second Al<sub>2</sub>O<sub>3</sub> housing plate to form a vacuum tight seal therebetween (see lines 1-22 of page 2).

As per claim 26 the Al<sub>2</sub>O<sub>3</sub> membrane formed from an Al<sub>2</sub>O<sub>3</sub> slurry is old and well know in the art of manufacturing for the Al<sub>2</sub>O<sub>3</sub> membrane.

9. Claims 26, 32 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Tack (GB 2124770 A).

Figs. 1 and 3 of Tack teaches a process of making a vacuum measuring cell comprising steps of: a. manufacturing a first Al<sub>2</sub>O<sub>3</sub> housing plate (1, an upper plate) with outer and inner opposing surfaces and an outer periphery; forming an electrically conductive surface (1d as shown in Fig. 3) on the inner surface of the first Al<sub>2</sub>O<sub>3</sub> housing plate to provide a first electrode of capacitive vacuum measuring cell; manufacturing a second Al<sub>2</sub>O<sub>3</sub> housing plate (1, a lower plate) with an outer periphery; forming an opening (opening of item 2) in the second Al<sub>2</sub>O<sub>3</sub> housing plate extending therethrough; sealing a connecting port (2) about the opening formed in the second Al<sub>2</sub>O<sub>3</sub> housing plate; manufacturing of an Al<sub>2</sub>O<sub>3</sub> membrane (4) having first and second opening surfaces and an outer periphery; forming an electrically conductive surface (broken line) on the surface of the Al<sub>2</sub>O<sub>3</sub> membrane to provide a second electrode of the capacitive vacuum measuring cell; disposing the Al<sub>2</sub>O<sub>3</sub> membrane between the inner surface of the

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first  $\text{Al}_2\text{O}_3$  housing plate and the second  $\text{Al}_2\text{O}_3$  housing plate with the first surface of the  $\text{Al}_2\text{O}_3$  membrane facing the inner surface of the first  $\text{Al}_2\text{O}_3$  housing plate and spacing the first surface of the  $\text{Al}_2\text{O}_3$  membrane at a predetermined distance from the inner surface of the first  $\text{Al}_2\text{O}_3$  housing plate to define reference vacuum chamber (C) therebetween, and spacing the second  $\text{Al}_2\text{O}_3$  housing plate at a predetermined distance from the second surface of the  $\text{Al}_2\text{O}_3$  membrane to define measurement vacuum chamber (opposing to C) therebetween; and sealing the outer periphery of the  $\text{Al}_2\text{O}_3$  membrane to the outer peripheries of first  $\text{Al}_2\text{O}_3$  housing plate and the second  $\text{Al}_2\text{O}_3$  housing plate to form a vacuum tight seal therebetween (see also col. 1, line 43 to col. 2, line 93).

As per claim 26 the  $\text{Al}_2\text{O}_3$  membrane formed from an  $\text{Al}_2\text{O}_3$  slurry is old and well know in the art of manufacturing for the  $\text{Al}_2\text{O}_3$  membrane.

As per claim 35 a first electrical vacuum-tight feedthrough (3) through the first  $\text{Al}_2\text{O}_3$  housing plate, and coupling the first electrical vacuum-tight feedthrough to the electrically conductive surface (1d as shown in Fig. 3) formed on the inner surface of the first  $\text{Al}_2\text{O}_3$  housing plate to effect electrical coupling thereto as shown in Figs. 1 and 3.

***Allowable Subject Matter***

10. Claims 37 and 38 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**Conclusion**

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul D Kim whose telephone number is 571-272-4565. The examiner can normally be reached on Monday-Friday between 8:00 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on 571-272-4690. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Paul D Kim  
Examiner  
Art Unit 3729